



## **Southeastern Colorado Water Activity Enterprise Board of Directors Meeting**

### **Authorization to Participate in Diligence Application for the Recovery of Yield Exchange**

#### **Action Item**

**Date: June 16, 2022**

**Agenda Item: V.A.**

#### **STAFF RECOMMENDATIONS:**

General and Special Water Counsel and District staff recommend that the Board authorize Special Water Counsel to file a joint application with the City of Aurora, the City of Colorado Springs, the City of Fountain, and the Pueblo Board of Water Works (Co-applicants) for a finding of reasonable diligence to maintain the conditional exchange rights decreed in Case No. 06CW120.

#### **BUDGET IMPLICATIONS:**

This matter is included within the legal budget for 2022. The Co-applicants anticipate that counsel for the City of Aurora will take the lead in drafting and prosecuting this application, minimizing the legal expense to the District.

#### **PREVIOUS BOARD ACTION AND/OR ACTIVITY:**

The Enterprise Board authorized legal counsel to join with the other Co-applicants to file the application in this case in late 2006. The Board previously approved a related intergovernmental agreement (IGA) with the co-applicants and the City of Pueblo in 2004. Following Board-approved stipulations with all parties, the Water Court (Division 2) entered its decree in Case No. 06CW120 on August 17, 2016.

#### **ISSUE SUMMARY DESCRIPTION:**

The Co-applicants (also known as the ROY participants) are parties to the 2004 six-party IGA with the City of Pueblo, which provides for the ROY participants to forego certain diversions to maintain specified flow levels on the Arkansas River through Pueblo. They can then recover the foregone yield through downstream storage, followed by exchanges to upstream storage (mainly Pueblo Reservoir) when the flows are sufficient. The decree in Case No. 06CW120 confirms conditional appropriative rights of exchange of the Foregone Diversions (within the meaning of the six-party IGA) through the reach of the Arkansas River from its confluence with the Holbrook Outlet Canal, in Otero County, upstream to Pueblo Reservoir.

Every six years, the owner(s) of a conditional water right must file an application with the Water Court explaining what progress, or diligence, has been made to complete the appropriation and use of the conditionally decreed rights. In a diligence application, the applicants may also apply to convert some of the conditional rights to absolute rights, if they have sufficient evidence to do so. If the District and the Co-applicants do not file their next diligence application for the ROY

Exchange by August 31, 2022, then the remaining conditional portions of these water rights will be cancelled.

District staff and legal counsel believe that the main diligence activities for the ROY exchange during the past six-year period have been studying and pursuing potential reservoir sites for downstream storage. The Foregone Diversions need to be recaptured in a downstream reservoir (“ROY Storage”) to maximize efficient use of the exchanged water for long-term operation of the ROY Exchange. In 2014, the ROY Participants undertook a comprehensive screening study to identify potential water storage sites within the decreed exchange reach. The study identified a site on Haynes Creek near the Town of Boone in Pueblo County that has the potential to meet the ROY Participants’ storage needs (“Haynes Creek Reservoir Site”). In October 2021, the District signed a new IGA with the ROY Participants to acquire the Haynes Creek Reservoir Site for future development of a ROY Storage reservoir project. In December 2021, the District and the other ROY Participants purchased the Haynes Creek Reservoir Site. The District’s portion of the total purchase price for the property was \$135,373.10.

Counsel for the City of Aurora is taking the lead in drafting the diligence application for the ROY Exchange. The District provides evidence of its diligence activities and reviews the draft application, including any engineering or accounting supplied by a co-applicant to support any claims to make portions of these exchange rights absolute. While the District does not have evidence to make an absolute claim in this application, we understand one or two other co-applicants likely will include absolute claims for their exchanges from existing storage in Holbrook Reservoir or Lake Meredith.

**SUGGESTED MOTION:**

I move the Board to authorize Special Water Counsel to join with the Co-Applicants in the Roy Exchange and file an application for diligence with the Water Court by August 31, 2022, to maintain the conditional exchange rights decreed in Case No. 06CW120.

**ATTACHMENTS:**

None.